IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2465 of 2004
To
FIRST APPEAL No. 2468 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY.GENERAL MANAGER - Appellant(s)
Versus
PATEL BHIKHABHAI BHUPATIDAS & 1 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR AV PRAJAPATI for Defendant(s) : 1,
MR HEMANG H PARIKH, AGP for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 15/03/2007

ORAL COMMON JUDGMENT :

Since these appeals arise from the common judgment and award

made by the 4th Joint Civil Judge [S.D.] Mehsana dated 22/4/2004 in Land Acquisition Reference No. 3642 of 2003 and its allied matters, they are heard together and now they are being disposed of by this common judgment.

2. The appellant is the Deputy General Manager, Oil & Natural Gas Corporation Ltd., Mehsana [hereinafter referred to as 'the ONGC']. He has challenged the award directing the ONGC to pay rent @ Rs.4.30 paise per sq.mtr., over and above the amount awarded by the Special Land Acquisition Officer. These are the cases of temporary acquisition under section 35 of the Land Acquisition Act [hereinafter referred to as 'the Act']. The lands have been acquired for the purpose of drilling wells. After completing necessary formalities under section 35(1), the land was occupied on 6/4/1979. The Special Land Acquisition Officer determined the compensation at the rate indicated in his award dated 7/6/1979. Since the original claimants disputed the rate, they submitted applications to refer the dispute to the Court for its decision on 10/7/2001. Accordingly, the Collector referred the dispute as to sufficiency of the compensation to the Court for its decision under section 35(3) of the Act. The references were resisted by the appellant by filing written statement. Apart from contending that the rate determined by the Special Land Acquisition Officer was proper, the appellant also raised dispute with regard to limitation in its written statement. The Civil Court, on the basis of the pleadings, framed the following issues :-

"1. Whether the compensation awarded by the land acquisition officer is not fair and adequate?

2. What additional compensation the claimant is entitled?

3. What order and award?"

Thereafter, on the basis of the material produced before it, the Reference Court gave decision holding that the claimants were entitled to receive additional compensation @ Rs.4.30 paise per sq.mtr., per year. It also directed the appellant to pay interest @ 9% p a on the additional amount for first year and thereafter @ 15% p a till realization. It further directed the appellant to pay 10% average rise per year in the rent after expiry of three years' period from the date of taking possession. The Reference Court awarded 20% more compensation for the standing crops. Hence these appeals.

3. I have heard Mr. RR Marshall, learned advocate for the appellant, Mr. AV Prajapati, learned advocate for the original claimants and Mr. Hemang H Parikh, Ld. AGP for respondent no. 2 – State. It is submitted by Mr. Marshall that the Court had no authority to determine compensation for a period beyond three years from the date of occupation. According to him, in the instant case, the Court has even covered period subsequent to three years for granting additional compensation. He has further submitted that the reference could not have been entertained by the Court since it was time barred. In his submission, the Collector had no authority to make reference under section 35(3) of the Act

after expiry of three years from the date of occupation of the land by the appellant.

3.1. As against that, Mr. Prajapati has supported the judgment and has submitted that there is no need to interfere with the award of the Court. In support of his submission, Mr. Marshall has placed reliance on two decisions of this Court; one is rendered in the case of Oil & Natural Gas Commission Ltd., v/s. Pandya Prahladbhai Manilal reported in 2006 (3) G.L.H. 662 and another rendered in the case of Patel Shambhubhai Bhaichanddas v/s. State of Gujarat dated 27/12/2006 in First Appeal No. 2568 of 1999 and its allied appeals. In these decisions, this Court has categorically held that the Court has power to decide the reference under section 35(3) of the Act in respect to period of three years commencing from the date of occupation of the land and not beyond that. Mr. Prajapati does not dispute this position of law. Hence, it is obvious that the decision of the Reference Court to the extent it covers the period subsequent to the expiry of three years from the date of occupation of the land in question, is without jurisdiction and authority and it is required to be quashed and set aside and it is hereby quashed and set aside.

3.2. The next submission of Mr. Marshall is to the effect that the references were not maintainable even for the period of three years from the date of possession since the applications under section 35(3) were submitted after inordinate delay and, therefore, references were time barred. He has drawn my attention to the copy of the application which shows that the award was

made on 7/6/1979. The possession was taken on 6/4/1979. The claimants submitted application on 10/7/2001 i.e., almost 22 years after the award was made. The appellant has raised this dispute in the written statement, but it clearly appears that the Reference Court has not attached any importance to the said plea and it has not even framed the issue in respect of limitation. In view of this position, these cases are required to be remitted to the concerned Reference Court for its decision on the aspect of limitation since this Court is not in a position to decide it in appeal. The appeals are, therefore, required to be remanded to the concerned Reference Court for its consideration on the issue of limitation. In view of the same, the impugned judgment and awards are quashed and set aside. The cases are remanded to the concerned Reference Court for its decision on the aspect of limitation. It is made clear that whatever material that has already been brought on record will remain as it is. However, the parties will be at liberty to lead additional evidence on this aspect before the Reference Court. The Reference Court will decide the issue with regard to limitation on the basis of the evidence already adduced before it and also the material that may be brought on record by the parties now. The Reference Court is required to complete this exercise on or before 31/12/2007. These appeals are, therefore, allowed with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.